Marco Polo Resort Motel *and* Hotel, Motel, Restaurant & Hi-Rise Employees & Bartenders Union, Local 355. Case 12-CA-8650

September 15, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On August 27, 1980, Administrative Law Judge Robert A. Gritta issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated it authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that Respondent violated Section 8(a)(1) of the Act when its motel manager, Charles Rosen, interrupted a union meeting being held on its premises, with its permission, to order some nonunion bargaining unit employees to leave the meeting. Respondent contends, however, that, in accordance with the Union's request, it only granted permission for a meeting limited to union members in the housekeeping department and, thus, it was within its rights to hold the Union to its request. In agreement with the Administrative Law Judge we find that the limited terms of the permission granted did not, absent some more compelling business justification than the one offered, license Respondent to police the Union's meeting to ensure that attendance was limited to union members.[1]

The purpose of the union meeting, which was known to Respondent, was to elect a union steward for the housekeeping department. Thus, the meeting involved an internal union matter and one in which Respondent could not claim a legitimate interest. The Board has long held that employers have no right to interfere with or to seek to control the selection of employee representatives who will deal with them for purposes of collective bargaining.[2] Here, Rosen not only disrupted the meeting by appearing at it,[3] he interfered with the Union's conduct of it by demanding that nonunion unit employees leave the meeting. That demand invaded a province which only the Union and its members have the right to control. Thus, Respondent's conduct, through Rosen, was unlawful unless Respondent could show that Rosen, in disrupting the meeting and making his demand, had a legitimate business reason which would, on balance, override the employees' interest in the conduct of the meeting free from his interference.

We conclude that Respondent has not advanced any such reason for Rosen's conduct. Respondent does not contend that the attendance of the nonunion bargaining unit employees in any way adversely affected its operations or even that it had reason to believe its operations might be so affected by the attendance of these employees. Thus, it does not, for example, contend that they should have been on duty elsewhere or that their attendance caused a disciplinary problem for Respondent. Rather its sole justification for Rosen's actions is that only limited permission to use its property had been granted and it was insuring that the limits of that permission were not exceeded. Absent any evidence that the Union intended to use the meeting for other than the stated purpose of electing a steward and inasmuch as the meeting did not impair or threaten the efficiency of Respondent's operations, we find Respondent's asserted reason to be insufficient as a basis for justifying Rosen's interruption of the meeting and his interference in its conduct. Thus, in these circumstances, whatever initial right Respondent had to limit the use of its property, we find that, once it granted the Union permission to hold the meeting on its premises, the employees' right to have that meeting conducted free of interference outweighed Respondent's interest in insuring that there was strict adherence to the limits of the permission it had granted for the use of its property.[4]

Accordingly, we shall adopt the Administrative Law Judge's recommended Order, as modified below.[5]

[1] It is the Board's responsibility to seek an accommodation between Sec. 7 rights and private property rights with as little destruction of one as is consistent with the maintenance of the other, *Hudgens* v. *N.L.R.B.*, 424 U.S. 507, 521 (1976), citing *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S. 105, 112 (1956).

[2] See, e.g., *Chicago Magnesium Castings Company*, 240 NLRB 400, 404 (1979).

[3] Clearly, Rosen's presence was unwelcome, as his request to attend the meeting had earlier been denied by the Union.

[4] Since we find that even under the restricted permission requested and received by the Union that Respondent did not have sufficient justification for interfering with the Union's meeting, we need not pass in this case on whether Respondent was entitled to impose those limitations under the terms of the visitation clause of the collective-bargaining agreement. Accordingly, we do not adopt the portion of the Administrative Law Judge's Decision that discusses that clause and its application. (But see *Southern Florida Hotel & Motel Association and its employer-members, The Estate of Alfred Kaskell d/b/a Carillion Hotel, et al.*, 245 NLRB 561 (1979), where the Board did pass on the clause at issue.)

[5] The Administrative Law Judge included a requirement in the proposed order that the entire multiemployer association post the notice.

Continued

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Marco Polo Resort Motel, Miami Beach, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete from paragraph 2(b) the sentence "Additionally, the agent Association shall be required to distribute to its employer members copies of the notice marked 'Appendix.'"

2. Delete from paragraph 2(c) the sentence "The Association shall also notify the Regional Director that the required distribution has been effected as ordered."

Such a broad notice requirement is not necessary in this case since there is no indication that other employers in the association would engage in similar conduct. Accordingly, we shall delete this provision from the recommended Order.

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge: This case was heard on November 7, 1979, in Coral Gables, Florida, based upon a charge filed by Hotel, Motel, Restaurant & Hi-Rise Employees & Bartenders Union, Local 355 (herein called the Union) on May 29, 1979, and a complaint issued by the Regional Director of Region 12 of the National Labor Relations Board on June 18, 1979.[1] The complaint alleged that Marco Polo Resort Motel (herein Respondent) violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing a policy of denying the Union access to Respondent's premises for the purpose of meeting or talking with nonunion employees in the bargaining unit on May 16. Respondent's timely answer denied the commission of any unfair labor practices.

All parties hereto were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by the General Counsel and Respondent. Both briefs were duly considered.

Upon the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and upon substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following:

[1] All dates herein are in 1979 unless otherwise specified.

FINDINGS

I. JURISDICTION AND STATUS OF LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The complaint alleges, Respondent admits, and I find that Marco Polo Resort Motel is engaged in the operation of a motor hotel in Miami Beach, Florida. Jurisdiction is not in issue. Respondent, in the past 12 months, in the course and conduct of its business operations purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Florida. Respondent, during the same period of time, had a gross volume of business in excess of $500,000. I conclude and find that Marco Polo Resort Motel is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE COLLECTIVE-BARGAINING HISTORY

Respondent is a member of the Southern Florida Hotel and Motel Association (herein association). The association, as bargaining agent for its member motels and hotels, negotiates and executes collective-bargaining contracts with the Union. The association thereafter administers the contract on behalf of its member motels and hotels. The Union has represented all of Respondent's employees, excepting executives, department heads, managerial employees, guards, and supervisors for a period of years. During this period, several contracts have been negotiated and executed between the Union and the Association. The latest of these contracts was executed in 1977.[2]

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The facts are not totally disputed, however, there are discrepancies between witnessess on collateral matters.

Rosen, motel manager, testified that in May the young lady who had been acting as steward for the housekeeping department did not want to continue as steward. Menditto, the union business agent, telephoned him requesting a meeting with the housekeeping employees to elect a new steward. Menditto asked for a date and time to meet with members of the Union in the housekeeping department. Rosen granted the request and gave Menditto a date, time, and room to use.

The meeting was set for May 16 at 4:30 p.m. in the compass room. On that day, someone in the housekeeping department informed Rosen that several nonunion employees were planning to attend the meeting. Upon hearing that nonunion employees planned to attend,

[2] The current contract dated 1977 is in evidence. The several preceding contracts between the Union and the association and a single contract from the "Castaways Hotel" between the Union and Castaways were rejected upon offer and placed in the rejected exhibit file.

Rosen testified, "I went up to the meeting and made an announcement, right then and there, that this meeting was for the purpose of union employees only, and I asked the non-union employees to leave the meeting."

Rosen stated that with reference to the "visitation clause" in the contract, he has not been advised by any negotiator that "union" meant "unit" in the 1968 or the 1977 collective-bargaining agreement. Further, he has not permitted the Union to meet with nonunion employees on motel property, nor has the Union ever requested to meet with nonunion employees on company time at the motel. Rosen has been the motel manager for eight years. The housekeeping department has three shifts which end, respectively, at 3:30 p.m., 4:30 p.m., and 11:30 p.m.

Menditto testified that he telephoned Rosen on May 10. He requested a meeting with all employees in the housekeeping department for the sole purpose of electing a shop steward. Rosen said yes, it's okay, and gave me May 16 in the compass room at 4:30 p.m. After the phone call, Menditto prepared a notice of the meeting and posted it in the motel next to the housekeeping department. Menditto recalled that the notice read, "A meeting will be held for all housekeeping department—May 16, 1979, at 4:30 p.m. in the compass room." There is no contract provision for posting of union notices but there is a bulletin board.

On May 16, Menditto arrived at the Motel about 4:20 p.m. and went directly to Rosen's office to deliver the checkoff list. Rosen said he wanted to attend the meeting but Menditto told him the meeting was only for the housekeepers in the bargaining unit. Menditto stated he would give Rosen the results of the election. Menditto went to the compass room, and Victor Morales, another business agent, and approximately 25 employees were already in the room. Menditto left for a short time and while he was out he learned that three housekeeping employees had left the meeting. When he returned to the meeting he heard Rosen tell the people present that anybody who did not belong to the Union had to leave the room. Menditto then told Rosen that the Union represented all the workers in the bargaining unit and they had a right to representation. Rosen stated that he wanted to cancel the meeting. Menditto responded that Rosen was denying the right of representation to the people. While they talked, three more employees walked out. One of the employees, Orlando, asked a question about insurance and Rosen interjected saying, "You speak to me; I'm your boss; I'll answer all your questions about insurance." Menditto asked Rosen to leave, and Rosen stated once more that nonunion employees had to leave the meeting then turned and walked out. The steward election was held and a steward was elected for the housekeeping department. Menditto stated that he had not been involved in a steward election before but the union rules were that only members of the Union in the bargaining unit could vote for shop stewards. The General Counsel asked Menditto:

> Q. Mr. Menditto, since you have been Business Agent for the Union, have you held meetings with employees, both union and non-union, at the Marco Polo Motel?
>
> A. No, when I had the meetings, only the union people . . . .
>
> Q. (Interrupting) Please answer my question, Mr. Menditto, Have you held meetings with . . . .
>
> A. (Interrupting) Yes; I have.

Morales testified that he arrived at the meeting room on May 16 at approximately 4:30 p.m. About 25 employees were in the room. Rosen came in the room and told the people present that if they were not in the Union they had no place in the meeting. They were to get out. Morales asked Rosen whether or not he gave Menditto permission to hold the shop steward election in the room. Rosen replied that he did give permission but only for union members. Morales told Rosen that the Union represented all employees in housekeeping and Rosen stated that only the union members. Morales replied, "The Union under law and under the contract, all the employees, union and non-union, the Union has a right to have a delegate to represent all of them." Rosen said it has nothing to do with the law. He repeated to the employees, "anybody that's not in the Union, out, out." Three employees got up and walked out. Morales stated that he recognized them as housekeepers. Orlando asked a question about insurance and Rosen said to ask him. Menditto then engaged Rosen in conversation and Morales talked to Orlando. Rosen then left the room.

Sandra Tuli, a seamstress in the housekeeping department for 11 years, testified that she attended the meeting on May 16. She responded to the meeting notice which said there was to be an employee meeting to elect a shop steward. Before the meeting started, she and Morales were discussing who should be elected shop steward. Tuli had been the acting shop steward. Something less than 30 employees came to the meeting. While the employees present waited, Rosen came into the room and said, "Anyone in the room that was not a union member would have to leave; they would have to leave the room." Nobody moved, so Rosen said it again. Morales then said that the Union was representing all the members, however, six or so walked out. Three the first time and three or four the second time. Menditto told Rosen that he would have to leave the room because he was not supposed to be at the meeting. Rosen left the meeting room.

Tuli further testified that the employees who left the room in response to Rosen were new employees in the laundry department who had not been employed long enough to be eligible for union membership. The steward waits until the employees have completed the probationary period before asking them to join the Union.

B. *Analysis and Conclusions*

The issues to be decided, simply stated, are:

Did Respondent maintain and enforce a policy against union visitation of nonunion employees on company premises?

Did Respondent discriminate against nonunion employees in the bargaining unit by its actions of May 16?

I do not have before me the validity of the visitation clause as it appears in the contract. I am faced with a defense offered by Respondent based upon that clause and its intent. Although not pleaded as an avoidance of defense, the General Counsel does argue both the validity of the clause on its face and the propriety of Respondent's justification for its questioned conduct through reliance upon the literal interpretation of the language of the clause.

I must, it seems, deal with technically duplicitous arguments to arrive at a final decision. Where union obligations appear in the argument of the General Counsel or Respondent, I have considered them only as they may help to better understand the totality of circumstances since the case before me involves only a Respondent employer.

The General Counsel amended the complaint during the testimony of Rosen to add the additional allegation of an 8(a)(1) violation. The General Counsel contends that Rosen's statement that he never permitted the Union to meet with nonunion employees on the motel property is evidence that Respondent maintained and enforced a policy which prohibited the representative of the employees from meeting with and/or talking with nonunion employees on Respondent's premises. Rosen's following statement in his testimony and the response of Menditto to General Counsel's question of whether the Union ever held meetings with both union and nonunion employees in attendance negates any enforcement of the alleged policy.[3] In my judgment both witnesses clearly show that meetings with nonunion employees were never requested of the motel management by Menditto. Additionally, the single statement of Rosen's is much too nebulous to be considered as policy. There is no evidence of any communication of a policy statement to the Union or to the employees in the bargaining unit, either orally or in writing. I therefore conclude and find that the General Counsel has not proven by substantial evidence either the existence or enforcement of the alleged policy.[4]

The requested meeting of housekeeping employees to elect a job steward and the visitation clause relied on by both parties (albeit out of phase with each other) is a different matter.

I find, contrary to Menditto's direct testimony, in part, that on May 10 he requested a meeting of union members in the housekeeping department on company premises, for the sole purpose of electing a steward for the housekeeping department. This finding is supported by the undisputed facts that only union members can vote in elections for shop stewards; the election was the sole purpose of the meeting; a steward was in fact elected on May 16; and Menditto did not deny he requested a meeting for union members only, either in his testimony recalling the events at the meeting or in the initial request to Rosen for the meeting.

It is undisputed that the Union is the exclusive representative of all employees in the established bargaining unit and that not all employees in the bargaining unit are members of the Union. Further, Rosen did appear at the meeting on May 16 and ordered to all employees present that were not members of the Union to leave the room and at least 6 employees, of the 25 present, left the meeting.

I do not credit Morales' statement that he recognized six employees and Menditto's statement that he recognized three employees, who left the meeting, as employees in the housekeeping department. There is nothing in their testimony to support their identification, otherwise self-serving, nor was either's demeanor on this point convincing to me. Neither Menditto nor Morales had met with nonunion employees in the bargaining unit before nor was any list of employees disclosed in the record other than a checkoff list. I conclude that neither Menditto nor Morales had any knowledge of the identity of the nonunion employees in the housekeeping department. The more convincing identification of the employees who left the meeting is found in the testimony of the acting shop steward of the housekeeping department, Tuli, who had been in the department for 11 years. Tuli, although called by the General Counsel, testified as surely as a disinterested witness. She was forthright in her response and displayed an intent to answer only when based upon her personal knowledge. In addition, her work station is adjacent to the laundry room. I credit Tuli's testimony completely. I therefore find that the six employees who left the meeting, as a result of Rosen's statement, were nonunion employees in the bargaining unit, employed in the laundry department rather than in the housekeeping department.

The operative clause of the current contract is as follows:

> Article 3. Authorized representatives of the UNION shall be permitted to come upon the premises of the EMPLOYER at reasonable hours for the purpose of visiting UNION members. Such visits shall be prearranged with the EMPLOYER and take place in designated areas and shall not occur during the busy period of the day in a manner which would interfere with the orderly and smooth operation of the EMPLOYER'S business. Shop stewards, except in emergencies, shall not be permitted to conduct union business on work time.

Respondent bases its defense of Rosen's conduct upon the Union's meeting request of May 10 and the visitation clause in the contract. Albeit not specifically stated it is inherent in Respondent's argument that the Union made such a restricted request because of the language in the visitation clause. Counsel relates that no union agent had ever asked permission of Rosen to allow the Union to talk to nonmembers on company time at the Marco Polo, apparently through adherence to the visitation clause. However, had the Union requested a meeting with nonmembers, Rosen would have permitted such a meeting

[3] I credit Menditto's initial response to the General Counsel's question as shown in the facts and discredit his second solicited and contrary response.

[4] It was obvious to me that Tuli was the only witness in the case who was new to the giving of testimony. This is partially explained by the fact that this is not the first time the parties have met on the same or similar issues. Further, Rosen's statement to assembled employees is not supportive of the allegation in that it was clearly shown to be founded upon the Union's prior request for the meeting, not a company policy on union visitation.

apparently in spite of the language of the visitation clause. Therefore, what Rosen did was simply to require the Union to stand by its meeting request and alternatively the clause in the contract, but if the clause in the contract seems too harsh, Rosen would not have denied any meeting request because of the clause. The substance of such an argument is wholly pervious and intracontradictory. Respondent cannot have its cake and eat it too. Further, counsel states, "The Union, obviously has a right not to talk to non-members if it so desires," apparently without regard for contract visitation rights and citing *Mastro Plastics Corp.* v. *N.L.R.B.*, 350 U.S. 270 (1956). Such a generalization is of little help and the so-called "right" is far from "obvious."[5]

The General Counsel argues that the May 10 meeting request of the Union was unlawful (contrary to a union's statutory obligation), therefore the Employer cannot rely upon its agreement to the Union's request to shield its conduct on May 16. Although I agree that Respondent cannot rely upon its May 10 agreement to justify its conduct on May 16, I do so because of the particular circumstances of this case, not a statutory obligation of the Charging Party.[6] The General Counsel points out that Respondent presented no evidence of overriding business reasons for interrupting the meeting of May 16 and demanding that nonunion employees leave. I deem the absence of such evidence as significant. At least some of the employees present were on their own time whether they were in the housekeeping department or not. Others were present with management's approval. The meeting clearly involved internal union matters not subject to overview by management. Menditto had previously turned down Rosen's request to attend the meeting offering instead to supply Rosen with the results of the meeting. In this posture the interruption and demand by the Employer constituted interference and restraint of employees in the bargaining unit. Accordingly, I find that Respondent, through its manager Rosen violated Section 8(a)(1) on May 16, by removing nonunion employees from the union meeting on company premises, independent of the visitation clause or the prior meeting request of the union representative. In so finding, I note particularly the absence of any evidence or contention from Respondent that the removal of the nonunion employees was based upon business reasons or any other reasons unrelated to their membership status in the Union. But the case does not end here.

Respondent specifies that by the language of the visitation clause the motel clearly limits the purpose for which the Union could come upon the premises.

The General Counsel in response attacks the validity of the visitation clause, equating visitation rights to benefits enjoyed, contending it restrains nonunion employees in the bargaining unit of their right to refrain from becoming members of the Union, citing *Schorr Stern Food Corp.*, 227 NLRB 1650 (1977), and *Gaynor News Company, Inc.*, 347 U.S. 17 (1954), in which 8(a)(3) discriminations were found on the basis of disparity among union members and nonunion members in the bargaining units.[7]

As I view the evidence herein, the record does not show that only new employees serving the probationary period are not members of the Union. Therefore, an employee in the bargaining unit, not a member of the Union, could have legitimate questions about the contract and his working conditions or a grievance he wishes to pursue, but no right to call for an audience with his union representative on company premises. That right has been reserved, by contract, only to union members, according to the General Counsel's argument and Respondent's defense. A portion of the General Counsel's argument is in error wherein he states, "The Union has a legal obligation to *meet with* and represent all employees in the unit and it cannot waive that obligation." It is true that a union must impartially represent all employees in the unit but whether or not it meets with employees, particularly on company premises, is a matter of choice. Considering the language, it would appear that the Union has waived the right of nonunion employees in the bargaining unit to meet with union representatives on company premises. The fact that the nonunion employees may meet with the union representative off company premises does not vitiate the preferential effect of the clause. Section 7 rights of nonunion employees are thereby subjected to qualifications with no correlative qualification on rights of union employees. Cf. *Ford Motor Company (Rouge Complex)*, 233 NLRB 698 (1977), wherein the Board held that the union could not waive the right of employees to exercise their Section 7 rights to distribute literature and the employer violates Section 8(a)(1) by enforcing a clause constituting such a waiver. Continuing the consideration of the General Counsel's argument that the clause as written is unlawful, I perceive that once the property right of the Employer has suffered encroachment, any modification thereof must be nondiscriminatory, in intent and implementation.

The General Counsel argues, conversely, that a prior decision of the Board places the visitation clause in the instant case beyond Respondent's use as a justification for Rosen's conduct.[8] I assume that the General Counsel is arguing for application of the judicial precedent known as "the law of the case." As admitted by Respondent and affirmed by the Union, Administrative Law Judge Nachman had before him the "association" which negotiates and administers contracts for Respondent and other employer-members with the Union. Albeit, Respondent was not directly involved in the prior proceeding, its association and the contract under consideration here was directly involved. The association offered before Judge Nachman the identical argument Respondent makes here; i.e., that the visitation clause of the contract permits Respondent to restrict the Union's visitation on company premises to only members of the Union. Administrative Law Judge Nachman, in finding an

[5] Even if the citation were specific, its purpose would escape me.

[6] Assuming I was to consider the statutory obligation of the Union, it is not altogether clear that the Union could not request such a restrictive meeting for the purpose of electing a shop steward.

[7] Although the General Counsel states in his brief ". . . available only to unit members, non-union employees . . . ." he could only mean, "available only to union members, non-union unit employees are restrained . . . ."

[8] *Southern Florida Hotel & Motel Association*, 245 NLRB 561 (1979).

8(a)(5) violation based upon a denial of visitation rights to the union in spite of the visitation clause, considered the language and intent of the visitation clause. He determined, from evidence in his record, that the intent of the association and the union in drafting the clause originally was not to restrict union visitation except to the extent of certain times and places on the employer's premises. His expressed finding was that although the contract uses the words "union members," the parties meant "union members," The parties quite clearly placed that construction on the 1968 contract, and the current contract (1977) should be so construed.

The Board adopted Administrative Law Judge Nachman's decision, including the 8(a)(5) finding, with respect to union visitation rights. Therefore, the contract remained intact, clause for clause, and his findings thereby become the Board's disposition of the case. The Board's disposition of any controversy is the law of the case, particularly with regard to the same parties or their privies. I conclude that not only is the subject matter identical in the two cases but Respondent is privy to the association and all other hotel and motel members of the association with respect to the collective-bargaining contract. Where, as here, the Board is faced with an attempt to relitigate a previously determined matter, it refuses to do so and holds the litigant to the prior determination. The Board's application of the law of the case as a judicial precedent is proper and has been approved by the Courts. The courts clearly hold that a matter having been once determined by the Board is not open to relitigation before the Board.[9]

Accordingly, I conclude and find that the construction of the visitation clause in the prior case (see fn. 8) is binding and forecloses relitigation by Respondent or consideration by me. I therefore reject Respondent's defense based upon a contrary interpretation of the visitation clause along with its' evidence and argument that Administrative Law Judge Nachman either had no evidence in his record to support his finding or that his finding was otherwise erroneous. In making this finding, I am mindful that the association is composed of 32 hotel and motel employers, all of whom do not attempt to restrict the Union's visitation beyond the terms of the contract. However, the presence of this Respondent before me, subsequent to the association's prior case requires that the association, as agent of Respondent, and all its members, as principals, be put on notice that the Board's disposition in "245 NLRB 561" applies to all employer-members of the association or any other employer signatory to the same 1977 contract negotiated with the Union.[10]

I am constrained, in view of prior discussion and assuming *arguendo*, to further find that Respondent's reliance upon a contrary interpretation of the clause would be unavailing because a literal interpretation of the clause would make the clause unlawful on its face.

Additionally, I reject Respondent's argument of "most favored nations clause" as simply accumulative and without efficacy to further justify Respondent's conduct. The reference to a "typographical error" is misplaced if directed at Administrative Law Judge Nachman's decision, in that his decision dealt with the parties' intent in drafting not the mechanics of typing.

Additional Conclusions of Law

1. Respondent, by ordering nonunion employees to leave the union meeting of May 16, interfered with and restrained employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

2. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. To adequately protect the Section 7 rights of all employees in the bargaining units of member hotels and motels of the association who are privy to the same collective-bargaining contract and to constitute the notice referred to in the text of this Decision, I shall recommend that the Southern Florida Hotel and Motel Association be required to post and distribute to its member-employers the attached notice.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Marco Polo Resort Motel, Miami Beach, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrupting properly held union meetings in progress on company premises and ordering employees in the bargaining unit in attendance at such meetings to leave the meeting due to lack of membership in the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Allow authorized agents of the Union to meet with employees in the bargaining unit on company premises without regard for individual employees' membership status in the Union pursuant to the visitation clause of the contract.

(b) Post at its motor hotel in Miami Beach, Florida, copies of the attached notice marked "Appendix."[12]

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[9] *N.L.R.B.* v. *Deaton Truck Line, Inc.*, 389 F.2d 163 (5th Cir. 1968).

[10] To hold otherwise is to invite a parade of hotel respondents *seriatim*, each seeking a contrary interpretation of the clause.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

Continued

Copies of the notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Additionally, the agent association shall be required to distribute to its employer members copies of the notice marked "Appendix."

(c) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith. The association shall also notify the Regional Director that the required distribution has been effected as ordered.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleged violations of the Act not specifically found.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrupt properly held union meetings in progress on our premises for the purpose of ordering employees in the bargaining unit in attendance at such meetings to leave the meeting due to lack of membership in the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by the National Labor Relations Act.

WE WILL permit authorized representatives of Hotel, Motel, Restaurant & Hi-Rise Employees & Bartenders Union, Local 355, to come on our premises for the purpose of conferring with our employees who are in the bargaining unit for which the Union is the collective-bargaining representative without regard for the membership status of individual employees and pursuant to the visitation clause in the contract.

MARCO POLO RESORT MOTEL